

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GEOFFREY WILLARD ATWELL,	:	CIVIL NO. 1:CV-03-1728
	:	
Plaintiff	:	(Judge Rambo)
	:	(Magistrate Judge Blewitt)
v.	:	
	:	
THOMAS LAVAN, <i>et al.</i>,	:	
	:	
Defendants	:	

MEMORANDUM AND ORDER

Before the court is a December 21, 2007 report and recommendation of the magistrate judge addressing the cross-motions for summary judgment filed by the Commonwealth Defendants and by Plaintiff.¹ The procedural history of this case will not be set forth herein as it is adequately set forth in the December 21, 2007 report and recommendation and is not in dispute.

The claims before this court come by way of a complaint filed pursuant to 42 U.S.C. § 1983 alleging numerous defendants violated three of Plaintiff's constitutional rights, i.e. an Eighth Amendment excessive confinement claim; an Eighth Amendment denial of proper medical care claim; and a First Amendment claim of denial of access to court.

Plaintiff's complaint alleges that he was being held in custody beyond the expiration of his sentence and that he was denied access to the courts and necessary medical care. The magistrate judge, after a thorough examination of the facts and the law applicable thereto, recommended that the Commonwealth Defendants' motion for summary judgment be granted as to all of Plaintiff's claims against them and that judgment be entered in favor of all of the Commonwealth

¹A motion for summary judgment was also filed by Defendants Stanish and Bohinski which is addressed in a separate report and recommendation by the magistrate judge.

Defendants and against Plaintiff. He further recommended that Plaintiff's cross motion for summary judgment against the Commonwealth Defendants be denied.

Plaintiff has filed objections encompassing 36 pages. In summary, he alleges that the magistrate judge only considered Defendants' motion and brief and did not address Plaintiff's motion and brief. He further alleges that had the magistrate judge considered Plaintiff's submission, he would have found material facts in dispute so that the magistrate judge could not have recommended granting the Commonwealth Defendants' motion for summary judgment.

The standards governing the court's consideration of Federal Rule of Civil Procedure 56(c) cross-motions are the same as those governing motions for summary judgment,² although the court must construe the motions independently, viewing the evidence presented by each moving party in the light most favorable to the non-movant. *Raymond Proffitt Fund v. U.S. Environmental Protection Agency*, 930 F. Supp. 1088, 1096 (E.D. Pa. 1996).

The allegation that the magistrate judge failed to give consideration to Plaintiff's submissions is without foundation. The magistrate judge makes references to document 189 (Plaintiff's brief in support of his motion for summary judgment), and document 191 (Plaintiff's appendix to his brief). The copies of those file documents received from the magistrate judge contain highlighting and have numerous pages tabbed.

Significantly, Plaintiff's motion for summary judgment only addressed the issue of Plaintiff's alleged illegal incarceration. The exhibits in Plaintiff's appendix (doc. 191) were used by the magistrate judge in addressing this issue. The arguments in support of Plaintiff's motion for summary judgment on the illegal incarceration issue are the same arguments set forth in Plaintiff's opposition brief to

²The magistrate judge has set forth the appropriate standard in his report and recommendation of December 21, 2007 at page 8.

the Commonwealth Defendants' motion for summary judgment. It would have been a waste of judicial resources for the magistrate judge to write two separate reports and recommendations on cross-motions for summary judgment. No other arguments are set forth in the objections other than a reiteration of Plaintiff's factual disputes that have been addressed by the magistrate judge.

IT IS THEREFORE ORDERED THAT:

- 1) The court adopts the December 21, 2007 report and recommendation of Magistrate Judge Blewitt.
- 2) The Commonwealth Defendant's motion for summary judgment is granted.
- 3) Plaintiff's cross-motion for summary judgment is denied.
- 4) The clerk of court shall defer the entry of judgment in favor of the Commonwealth Defendants and against Plaintiff until the conclusion of this case.
- 5) Any appeal from this order will be deemed frivolous and not taken in good faith.

s/Sylvia H. Rambo

SYLVIA H. RAMBO
United States District Judge

Dated: March 26, 2008.